

## A BRIEF VIEW

### *Of the Present Relations between the Government and People of the United States and the Indians within our national limits.*

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In the various discussions, which have attracted public attention within a few months past, several important positions, on the subject of the rights and claims of the Indians, have been clearly and firmly established. At least, this is considered to be the case, by a large portion of the intelligent and reflecting men in the community. Among the positions thus established are the following; which, for the sake of precision and easy reference, are set down in regular numerical order.

1. The American Indians, now living upon lands derived from their ancestors, and never alienated nor surrendered, have a perfect right to the continued and undisturbed possession of these lands.

2. Those Indian tribes and nations, which have remained under their own form of government, upon their own soil, and have never submitted themselves to the government of the whites, have a perfect right to retain their original form of government, or to alter it, according to their own views of convenience and propriety.

3. These rights of soil and of sovereignty are inherent in the Indians, till voluntarily surrendered by them; and cannot be taken away by compacts between communities of whites, to which compacts the Indians were not a party.

4. From the settlement of the English colonies in North America to the present day, the right of Indians to lands in their actual and peaceable possession, and to such form of government as they choose, has been admitted by the whites; though such admission is in no sense necessary to the perfect validity of the Indian title.

5. For one hundred and fifty years, innumerable treaties were made between the English colonists and the Indians, upon the basis of the Indians being independent nations, and having a perfect right to their country and their form of government.

6. During the revolutionary war, the United States, in their confederate character, made similar treaties, accompanied by the most solemn guaranty of territorial rights.

7. At the close of the revolutionary war, and before the adoption of the federal constitution, the United States, in their confederate character, made similar treaties with the Cherokees, Chickasaws, and Choctaws.

8. The State of Georgia, after the close of the revolutionary war, and before the adoption of the federal constitution, made similar treaties, on the same basis, with the Cherokees and Creeks.

9. By the constitution of the United States, the exclusive power of making treaties with the Indians was conferred on the general government; and, in the execution of this power, the faith of the nation has been many times pledged to the Cherokees, Creeks, Chickasaws, Choctaws, and other Indian nations. In nearly all these treaties, the national and territorial rights of the Indians are guaranteed to them, either expressly, or by implication.

10. The state of Georgia has, by numerous public acts, implicitly acquiesced in this exercise of the treaty-making power of the United States.

11. The laws of the United States, as well as treaties with the Indians, prohibit all persons, whether acting as individuals, or as agents of any state, from encroaching upon territory secured to the Indians. By these laws severe penalties are inflicted upon offenders; and the execution of the laws on this subject, is specially confided to the President of the United States, who has the whole force of the country at his disposal for this purpose.

The positions here recited are deemed to be incontrovertible. It follows, therefore,

That the removal of any nation of Indians from their country by force would be an instance of gross and cruel oppression :

That all attempts to accomplish the removal of the Indians by bribery or fraud, by intimidation and threats, by withholding from them a knowledge of the strength of their cause, by practising upon their ignorance, and their fears, or by vexatious importunities, interpreted by them to mean nearly the same thing as a command ;—all such attempts are acts of oppression, and therefore entirely unjustifiable :

That the United States are firmly bound by treaty to protect the Indians from force and encroachments on the part of a state ; and a refusal thus to protect them would be equally an act of bad faith as a refusal to protect them against individuals : and

That the Cherokees have therefore the guaranty of the United States, solemnly and repeatedly given, as a security against encroachments from Georgia and the neighbouring states. By virtue of this guaranty the Cherokees may rightfully demand, that the United States shall keep all intruders at a distance, from whatever quarter, or in whatever character, they may come. Thus secured and defended in the possession of their country, the Cherokees have a perfect right to retain that possession as long as they please. Such a retention of their country is no just cause of complaint or offence to any state, or to any individual. It is merely an exercise of natural rights, which rights have been not only acknowledged but repeatedly and solemnly confirmed by the United States.

Although these principles are clear and incontrovertible, yet many persons feel an embarrassment from considering the Cherokees as *living in the State of Georgia*. All this embarrassment may be removed at once by bearing in mind, that the Cherokee country is not in Georgia, in any sense affecting sovereignty, right of soil, or jurisdiction ; nor will it rightfully become a part of Georgia, till the Cherokees shall first have ceded it to the United States. Whenever that event shall take place, it will immediately fall into the States of Georgia, Tennessee and Alabama ; not by virtue of any compact to which the Cherokees have been a party, but in consequence of compacts now existing between these States and the United States. This matter is placed in a perfectly clear light, by the titles of various laws of Georgia, which have been enacted to dispose of lands obtained from the Creeks. Even so late as the year 1825, the following title is found in the statute-book of Georgia : viz. "*An act to dispose*

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of and distribute the lands lately acquired by the United States, for the use of Georgia, of the Creek nation of Indians, by a treaty made and concluded at the Indian Spring, on the 12th day of February, 1825." This act was approved by Governor Troup on the 9th of June, the same year. The first section of the act begins thus: "*That the territory acquired of the Creek nation of Indians, by the United States, for the use of Georgia, as described in articles of a treaty entered into and concluded between commissioners on the part of the United States and the chiefs, head men and warriors of the Creek nation of Indians,*" &c.

These extracts give a fair account of the whole matter. If the territory was acquired from the Creek nation, it was manifestly the property of the Creek nation before it was thus acquired. If it was acquired by the United States and through the instrumentality of a treaty, it was because the treaty-making power is, by the federal constitution, vested exclusively in the United States, and because the Creeks, being a nation, could not dispose of their country in any other manner than by treaty. If it was acquired for the use of Georgia, it follows that Georgia had not the use of it previously. In fact, Georgia had never thought of legislating for the Indian country, till two or three years after the date of this law. According to the 11th article of the treaty of Holston, and to the law of the United States regulating intercourse with the Indian tribes, the Cherokee country is no more under the jurisdiction of Georgia, than it is under the jurisdiction of Missouri or Pennsylvania; nor can it be under the jurisdiction of any State, or of the United States, till it shall have been surrendered to the United States by treaty. Let this supposed embarrassment therefore, be finally dismissed.

Again, it is supposed, that the existence of a little separate community of Indians, living under their own laws, and surrounded by communities of whites, will be fraught with some great and undefined mischief. This supposed evil is set forth under learned and hard names. It is called *an anomaly*, an *imperium in imperio*, and by various other pedantic epithets. When the case is accurately examined, however, all the fog clears away, and nothing appears in the prospect but a little tract of country full of civilized Indians, engaged in their lawful pursuits, neither molesting their neighbours, nor interrupting the general peace and prosperity.

If the separate existence of the Indian tribes were an inconvenience to their neighbours, this would be but a slender reason for breaking down all the barriers of justice and good faith. Many a rich man has thought it very inconvenient, that he could not add the farm of a poor neighbour to his possessions. Many a powerful nation has felt it to be inconvenient to have a weak and dependent state in its neighbourhood, and has therefore forcibly joined the territory of such state to its own extensive domains. But this is done at the expense of honour and character, and is visited by the historian with his severest reprobation.

In the case before us the inconvenience is altogether imaginary. If the United States were examined, with a view to find a place where Indians could have a residence assigned them, so that they might be as little as possible in the way of the whites, not a single

tract, capable of sustaining inhabitants, could be found more secluded than the present country of the Cherokees. It is in the mountains, among the head waters of rivers diverging in all directions; and some parts of it are almost inaccessible. The Cherokees have ceded to the United States all their best land. Not a twentieth part of what remains is of a very good quality. More than half is utterly worthless. Perhaps three tenths may produce moderate crops. The people of the United States have a free passage through the country, secured by treaty. What do they want more? If the Cherokee country were added to Georgia, the accession would be but a fraction joined to the remotest corner of that great State;—a State now scarcely inferior in size to any State in the Union except Virginia; a State having but six or seven souls to a square mile, counting whites and blacks, and with a soil and climate capable of sustaining a hundred to the square mile with the greatest ease. There is no mighty inconvenience, therefore, in the arrangement of Providence, by which the Cherokees claim a resting place on the land which God gave to their fathers.

And as to the learned chimera of *imperium in imperio*, it is, and always has been, one of the most common things in the world. The whole of modern Germany is nothing else but one specimen after another of *imperium in imperio*. Italy has an abundance of specimens also. As to our own country, we have governments within governments of all sizes, and for all purposes, from a school district to our great federal union. And where can be the harm of letting a few of our red neighbours, on a small remnant of their own territory, exercise the rights which God has given them? They have not the power to injure us; and, if we treat them kindly and justly, they will not have the disposition. They have not intruded upon our territory, nor encroached upon our rights. They only ask the privilege of living unmolested in the places where they were born, and in possession of those rights, which we have acknowledged and guaranteed.

There is one remaining topic, on which the minds of many benevolent men are hesitating; and that is, *whether the welfare of the Indians would not be promoted by a removal*. Though they have a right to remain where they are; though the whole power of the United States is pledged to defend them in their possessions; yet it is supposed by some, that they would act wisely, if they would yield to the pressure, quietly surrender their territory to the United States, and accept a new country beyond the Mississippi, with a new guaranty.

In support of this supposition, it is argued, that they can never remain quiet where they are; that they will always be infested by troublesome whites; and that the states, which lay claim to their territory, will persevere in measures to vex and annoy them.

Let us look for a moment at this statement. Is it indeed true, that, in the very prime and vigour of our republican government, and with all our boasted reliance upon constitutions and laws, we cannot enforce as plain an act of Congress as is to be found in our national statute-book? Is it true, that while treaties are declared in the constitution to be the supreme law of the land, a whole volume of these supreme laws is to be at once avowedly and utterly disregarded? Is

the Senate of the United States, that august body, as our newspapers have called it a thousand times, to march in solemn procession, and burn a volume of treaties? Are the archives of state to be searched, and a hundred and fifty rolls, containing treaties with Indians, to be brought forth and consigned to the flames on Capitol Hill, in the presence of the representatives of the people, and all the dignitaries of our national government? When ambassadors from foreign nations inquire, *What is the cause of all this burning?* are we to say, "Forty years ago President Washington and the Senate made treaties with the Indians, which have been repeated and confirmed by successive administrations. The treaties are plain, and the terms reasonable. But the Indians are weak, and their white neighbours will be lawless. The way to please these white neighbours is, therefore, to burn the treaties, and then call the Indians our dear children, and deal with them precisely as if no treaties had ever been made." Is this the answer to be given to the honest inquiries of intelligent foreigners? Are we to declare to mankind, that in our country law is totally inadequate to answer the great end for which human laws are made, that is, the protection of the weak against the strong? And is this confession to be made without feeling and without shame? It cannot be. The people of the United States will never subject themselves to so foul a reproach. They will not knowingly affix to the character of a republican government so indelible a stigma. Let it not be said, then, that the laws of the country cannot be executed. Let it never be admitted, that the faith of the nation must be violated, lest the government should come into collision with white intruders upon Indian lands:—with intruders, whose character is admitted to be lawless; and who can be invested with power, in no other way than by tamely yielding to their acts of encroachment and aggression.

The laws can be executed with perfect ease. The Indians can be defended. The faith of the nation can be preserved. Let the President of the United States, whenever the Indians shall be threatened, issue his proclamation, describing the danger and asserting the majesty of the laws. Let him refer to the treaties and the acts of Congress, which his oath of office obliges him to enforce; let him refer to the treaties and the acts of Congress, which his oath of office obliges him to enforce; let him recite the principal provisions of these treaties and acts, and declare, in the face of the world, that he shall execute the laws, and that he shall confidently rely upon the aid and co-operation of all good citizens:—let him do this, and neither he, nor the country, will be disappointed. Law will triumph, and oppression will hide its head.

But it may be supposed, after all, that it would be for the benefit of the Cherokees and other tribes to remove beyond the Mississippi, and there enjoy the advantages, which are offered by the general government. These advantages are developed in a plan, which has been some years before the American people, and which is in substance, as follows:

Congress will set apart a tract of country of moderate dimensions, beyond Missouri, Arkansas, and Louisiana, (principally west

of the territory of Arkansas,) and will guaranty it as the perpetual residence of Indians. Upon this tract of country shall be congregated numerous tribes, now residing in different states and territories. The land shall be divided among tribes and individuals, as Congress shall direct. The emigrants, thus congregated, shall be governed by white rulers, till they are sufficiently amalgamated, instructed, and civilised, to be admitted to some share in the government of themselves. The United States will pay the expense of a removal; will furnish implements of agriculture, the mechanical arts, schools, and other means of civilization. Intruders will be excluded; ardent spirits will never be permitted to pass the line of demarcation; good morals and regular habits will be promoted; and the Indians will rise rapidly in the scale of intelligence and virtue. This is the plan; and some good men have so much confidence in it, that they advise the Indians to embrace it, as their only refuge.

But before this advice is officiously pressed upon the Cherokees and other tribes, let the following things be considered.

1. The Cherokees and other tribes are now separate communities, or nations. They have rights as communities, and, under this associated character, they hold the United States by the strong obligations of treaties. They can, therefore, so long as their present relation continues, make a strong, united, and irresistible appeal to the justice and magnanimity of the United States. But the moment they consent to a removal, the existence of their separate communities will cease. Their act of consent to a removal may be called a treaty; but the moment the treaty is signed one of the parties becomes defunct. Let the terms be violated ever so grossly, and there is no nation of Indians to claim redress. Individuals may complain, but there is no community; for by consent to a removal, the Indians come as much under the government of the United States, as the District of Columbia is. Such a change in their condition is a great one; and let no man advise to it, unless he has duly considered its consequences. From being an independent people, rapidly improving in their character and habits, they will be put into leading strings, and will instantly feel that they are vassals. From walking abroad on their own possessions, as they are now wont to do, they will feel like paupers and mendicants, taken by the government, and stowed away in a crowded poor-house. At least these feelings seem very natural, if they are not certain.

2. There must be much suffering, in the removal of the 60,000 souls, which constitute the south-western tribes;—much exposure, sickness, hunger, nakedness, either on the journey, or soon after the arrival. The expense will be great; but this our national treasury can bear. The personal suffering comes wholly upon the Indians.

3. The removal must be conducted gradually. Of course all existing associations must be broken up; and the emigrants would be scattered along, at considerable intervals, and thus compelled to form new connexions. This alone would greatly impede their progress in civilization.

4. From the best accounts, which can be obtained of the country, which is selected for this permanent residence of Indians, it is

deficient in wood and water, two articles of indispensable necessity to the emigrants. It is certain, that the Chickasaws, who visited this country last year at the expense of government, were unanimously dissatisfied with it as a place for their future residence. No man should advise the Indians to remove from their present habitations, unless he is in possession of undoubted evidence that the place, to which they are to be transported, is a desirable residence, or at least a comfortable one. No such evidence has yet been produced.

5. The crowding together of different tribes, speaking languages entirely unintelligible to each other, and accustomed to different habits, would be productive of quarrels, and effectually impede the progress of improvement.

6. The proposed plan of government is entirely visionary, and has nothing, in the history of human affairs, to sustain it. The white rulers, who should have the charge of controlling and guiding such a heterogeneous mixture of different tribes, would need to be men of the most eminent qualifications;—men of great wisdom, firmness, patience, disinterestedness, and active persevering benevolence. With all these qualifications, their success would be doubtful; without them, defeat would be certain. But there is not the remotest probability, that a majority of agents and sub-agents would be of this character. Judging from all past experience, some of them would be profane, licentious, and overbearing; and a majority would be selfish, looking principally at the emoluments of office and caring little for the Indians.

7. No guaranty of a new country could be given to the Indians. The pretended guaranty would be either a treaty, one of the parties to which would cease to exist at the moment of signing, or an act of Congress, which might be repealed whenever Congress should please. Indeed, in these circumstances, it is an insult to common sense to talk of a guaranty. Even supposing half a dozen, or half a score, of Indian tribes, crowded together on the same territory, under white rulers, *could* maintain their separate national existence, a thing manifestly impossible; but supposing this, how could these tribes insist on their right by treaty to lands upon which they had been placed by the United States, when they had previously left the original soil of their ancestors, because treaties were not strong enough to defend their possession. They can never have a title to a new country of equal validity with their title to the soil of their fathers. So they will regard the matter; and so all men will regard it.

8. It may be expected, therefore, that they will hardly get settled in their new location, before they will be urged to remove again. It will be impossible to escape the cupidity of the whites. If the Indians become outcasts and vagabonds, it will be said that they may as well be driven beyond the Rocky Mountains at once. If they, or a part of them, should live comfortably, it will prove that white men would live comfortably on the same soil. In a quarter of a century, the population of the United States will be 25,000,000. There will probably be 4,000,000 whites west of the Mississippi.



Why should these whites be more tender of the rights of Indians than the whites of the present day?

9. The Cherokees, and the other south-western tribes, cannot be persuaded to remove voluntarily. If they go at all, they will go by constraint. They will consider the United States as guilty of the grossest violation of treaties. Of this state of their minds, the proof is already abundant; and, their mind being in this state, they cannot enter with vigour into any measures for their good, but will abandon themselves to indolence, to despondency, and finally to despair.

These suggestions are made without the least intention to exaggerate. Let them be attentively examined.

May a gracious Providence avert from this country the awful calamity of exposing ourselves to the wrath of heaven, as a consequence of disregarding the cries of the poor and defenceless, and perverting to purposes of cruelty and oppression, that power which was given us to promote the happiness of our fellow-men.

The undersigned having examined the preceding statement hereby express their approbation of it, and recommend it to the consideration of the public.

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